

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 04-1041V

Filed: March 14, 2007

JENNIFER STONE, and GARY STONE, *
Parents and Next Friends of *
AMELIA STONE, a minor, *

Petitioners, *

v. *

SECRETARY OF THE DEPARTMENT OF *
HEALTH AND HUMAN SERVICES, *

Respondent. *

ORDER¹

The undersigned has reviewed the record and requires one additional piece of information prior to deciding this case. In summary, based upon the medical records, the testimony of the parties' respective experts, and the medical texts filed simultaneously with this Order, the undersigned sees this case as potentially similar to the medical issues presented and resolved in Cusati v Sec'y of HHS, No. 99-492, 2005 WL 4983872 (Fed. Cl. Sp. Mstr. Sept. 22, 2005)² and Simon v. Sec'y of HHS, No. 05-941V. Each of the aforementioned cases, involves a child that was vaccinated, experienced a fever, suffered a complex febrile seizure and went on to develop epilepsy and various developmental problems.

¹Because this order contains a reasoned explanation for the undersigned's action in this case, the undersigned intends to post this order on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire" decision will be available to the public. Id.

²Please note that the experts involved in Cusati are the same experts appearing in the instant case.

In the instant case, the petitioner, Amelia Stone received a DtaP Vaccination on August 27, 2001. On August 28, 2001, Amelia suffered two febrile seizures each lasting at least thirty minutes. Petitioner's Exhibit (Pet. Ex.) 2 at 9. As Respondent's expert agreed "the vaccine, the DtaP vaccine in this instance was likely what caused the fever that triggered the initial seizure." Tr. at 40. On that same date Amelia was diagnosed as having new onset of seizures and status epilepticus. Pet. Ex. 7 (a) at 3,7. From this time forward, Amelia continued to suffer from both febrile and afebrile seizures and as her seizure disorder progressed her development lagged and eventually began to decline. Pet. Ex. 1 at 85, Pet. Ex. 6 at 1-2.

As my colleague found in Cusati and I have concluded in Simon: the vaccine in each case caused a fever, which in turn caused or triggered a **complex febrile seizure**. A complex febrile seizure is defined as a seizure lasting over 15 minutes, occurring more than once in a 24 hour period or with focal features.³ As discussed by Gregory Holmes,⁴ if the first febrile seizure is complex, the risk for developing epilepsy increases significantly. In addition, prolonged seizures are recognized as the antecedent of sequelae. Consistent with the findings in Cusati and Simon, if a case fits the above described pattern, the undersigned is strongly inclined to find in favor of the petitioner.

In the instant case, neither the medical reports nor either expert has characterized Amelia's initial seizures as "complex febrile seizures." However, as aforementioned, each party agrees Amelia experienced two initial febrile seizures following her vaccinations. Each seizure lasted at least thirty minutes. From the literature it appears evident to the undersigned that these two seizures met the definition of complex febrile seizures and thus could be diagnosed as such. However, subsequent to her initial seizures Amelia was diagnosed as status epilepticus and suffering from new onset of seizures, but was not diagnosed as having experienced a complex febrile seizure. Pet. Ex. 7 (a) at 3,7. The question that arises is whether the initial seizures suffered on August 28, 2001 were complex febrile seizures? If they were, the undersigned is strongly inclined to resolve this case consistent with my colleague's decision in Cusati and my finding in Simon.

Accordingly, the undersigned requests each medical expert provide a brief written report, ***no later than April 6, 2007***, answering, with a full explanation, the following query. Whether the initial seizures suffered by petitioner, Amelia Stone, on August 28, 2001 were "complex febrile seizures?" The experts should attach to their report any helpful medical literature.

The parties may contact my staff attorney, Jocelyn McIntosh, at (202) 357-6344 with any questions regarding this order.

IT IS SO ORDERED.

³ See Gregory Holmes, DIAGNOSIS AND MANAGEMENT OF SEIZURES IN CHILDREN 226-236, 228 (1987).

⁴ See Gregory Holmes, DIAGNOSIS AND MANAGEMENT OF SEIZURES IN CHILDREN 226-236 (1987).

s/ Gary J. Golkiewicz
Gary J. Golkiewicz
Chief Special Master